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SUBJECT: BRAZIL: INCORPORATING CLIMATE CHANGE POLICY INTO DOMESTIC  
LEGISLATION

REF: 2008 BRASILIA 1462; 2010 BRASILIA 108; 2009 BRASILIA 1460

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¶1. (SBU) SUMMARY. At the Copenhagen Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC), the Government of Brazil (GOB) announced the mitigation actions it plans to take to reduce its greenhouse gas emissions by 36.1 percent to 38.9 percent by 2020 compared with "business as usual." Now, the GOB has gained Congressional support for its climate change policy, which has been incorporated into domestic legislation. For good measure, the Congress has approved a separate law creating a National Climate Change Fund. This fund will support mitigation and adaptation projects and will rely principally on a to-be-determined portion of future oil and gas revenues. END SUMMARY.

#### THE NATIONAL CLIMATE CHANGE POLICY LAW

¶3. (SBU) At the Bali conference in December 2008, the GOB released its first National Climate Change Plan. The plan consists of a detailed listing of a host of current and planned measures to reduce greenhouse gas emissions by sectors: forests, agriculture, energy, transportation, etc. (REFTEL A) Most notably, the Plan included a goal of sharply cutting the rate of deforestation in the Amazon by nearly 70 percent by 2017. The Plan came out of extensive work by an interministerial group, and it obtained the approval of President Luiz Inacio Lula da Silva. The Plan provided the basis for the ambitious position that the GOB took at Copenhagen. As a next step, the GOB sought Congressional endorsement of its climate change goals and efforts. Accordingly, the Congress passed legislation (Law 12.187/2009), which President Lula signed on December 29, 2009, that reflects the position the GOB presented at Copenhagen, which was later inscribed into the Copenhagen Accord. (REFTEL B)

¶4. (SBU) The National Policy on Climate Change Law is a short piece of legislation - just six pages - that sets forth the general principles Brazil will follow. Highlights of that legislation include:

- Adopting mitigation actions (which the GOB will determine) to reach a voluntary national goal of reducing greenhouse gas emissions by 36.1 percent to 38.9 percent compared with projected emissions by 2020. (Art. 12)

- Requiring that climate change reduction efforts be compatible with sustainable development and economic and social interests. (Art. 4 and Art. 5)

- Designating the principal instruments for implementation, most importantly: the National Climate Change Plan (which empowers the GOB authority to establish individual mitigation activities); the National Climate Change Fund (discussed below); Brazil's submission to the UNFCCC Conference of the Parties; and fiscal measures. (Art. 6)

- Authorizing the Executive Branch to establish sectoral plans for mitigation and adaptation with the objective of creating a low carbon economy. (Art. 11)

- Creating the Brazilian Market for Emissions Reductions (MBRE) to provide for trading in avoided emissions certificates.

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¶5. (SBU) The GOB intends to unveil in March a revised National Climate Change Plan. There are at least two significant changes expected to be made to the 2008 Plan. First, the GOB intends to reduce the rate of deforestation in the Amazon by 80 percent by ¶2020. This is a bit more ambitious than the 2008 Plan, which called for a reduction of about 70 percent by 2017. Second, the revised Plan will likely contain a goal to reduce the rate of deforestation in the Brazilian savannah region (the Cerrado) by 40 percent by 2020. This was the next largest mitigation measure announced at Copenhagen after reducing the rate of Amazon deforestation.

#### THE NATIONAL CLIMATE CHANGE FUND LAW

¶6. (SBU) Besides obtaining congressional support for its climate change policy, the GOB sought to establish a new domestic climate change financing mechanism. Consequently, the Congress enacted a law (No. 12.114, dated December 9, 2009) that creates the National Climate Change Fund with the purpose of supporting "projects or studies and financing of undertakings that aimed at mitigating climate change and adapting to the effects of climate change." The legislation calls for the Environment Ministry to set up a Steering Committee, which includes six federal government representatives and five representatives from non-governmental sector.

¶7. (SBU) The Fund will provide financial support for mitigation actions, adaptation measures, education and training, payment for environmental services related to contributing to carbon stocks, reducing deforestation and recuperating of degraded forest areas. The National Development Bank (BNDES) will administer the Fund. This is the same bank that administers the Amazon Fund, which has received pledges of over a US\$1 billion from Norway and Germany for conserving the Amazon forest. (REFTEL C)

¶8. (SBU) The principal source of funding for the National Climate Change Fund is meant to be from a special participation in oil royalties under the National Energy Policy Law (No. 9.478 of August 6, 1997). That law is amended to provide (Article 50) that in case of high earnings from oil or gas the President may decree a special participation, which will be shared between the Ministry of Mines

and Energy and this new Fund. (COMMENT. Environment Minister Carlos Minc has spoken of the Fund potentially receiving billions of dollars from the exploitation of Brazil's vast offshore oil and gas reserves. However, it is likely to take many years before those revenues come on line, and then the President will have to decide whether and how much of a special participation to give the Fund. END COMMENT.) The Fund may also receive budget contributions and international and national donations.

19. (SBU) COMMENT: The GOB has obtained congressional approval for its climate change policy, including the overall voluntary target of reducing emissions by 36.1 to 38.9 percent by 2020. Further, it has obtained a broad mandate to develop individual domestic measures to achieve the overall goal. The legislation creating a National Climate Change Fund is a positive step forward, though it leaves the contentious issue of funding unresolved. With these two pieces of legislation, the GOB will go to the UNFCCC COP-16 in Mexico with the backing of Congress for the ambitious position it laid out in Copenhagen. END COMMENT.

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